IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.4.2007

CORAM

THE HON'BLE MR.JUSTICE S.ASHOK KUMAR

CRP(PD) No. 1549 of 2006
and M.P.No. 1 of 2007

...

1. S.Rangarajan

2. R.Varadarajan

3. G.Durairajan ... Petitioners

Vs.

1. M/s.Nathan's Foundations Pvt., Ltd.,
   rep. By its Managing Director
   Mr.K.V.Shankaralingam
   No.18, Arulambal Street,
   T.Nagar
   Chennai-17

2. Usha Sampath

3. V.Sundararaman

4. Mr.U.Ramanathan

   Dr.V.Gopalan (Deceased)

5. K.Uma

6. Dr.S.Vijay Balaji

7. S.Subashini ... Respondents

(cause title accepted vide order
of court dated 07.11.2006 and made in
MP NO. 1/06 CRPSR NO. 94292/06

Civil Revision Petitions are filed under Article 227 of the Constitution of India against the order dated 27.10.2006 made in I.A.No:14908 of 2005 in O.S.No:5558 of 2001, passed by the learned VIII Assistant Judge, City Civil Court, Chennai.

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For Petitioner : Mr.T.V.Ramanujam, S.C.,
for Mr.M.S.Krishnan

For Respondents : Mr.P.S.Raman S.C., for
Mr.M.Ganesan for R.1
Mr.K.V.Ananthakrishnan for R4
No appearance : RR 2, 3, 5 and 6

ORDER

The challenge in this Revision Petition is the correctness of the order of status dated 27.10.2006, passed in I.A.No.14908 of 2005 in O.S.No.5558 of 2001, based on the memo filed by the respondents herein.

2. The suit has been filed by the petitioner herein and 5 others against the respondents 1 and 4 and others herein for the relief of permanent injunction restraining the defendants and their men and agents from entering the lands of the plaintiffs or putting up any compound wall or so called development works in respect of the plots belonging to the plaintiffs.

3. According to the revision petitioners, all the plot owners formed a Welfare Society and the second respondent was elected as the President. But the second respondent was functioning in an autocratic manner and entered into a Memorandum of Understanding on 15.7.1999 with the first respondent, Promoter, which was not backed by consent of all the plot owners. Consequently, the second respondent himself cancelled the above MOU. A Power of Attorney was also executed by the second respondent to obtain NOC from the Mass Rapid Transport System (MRTS). Apart from that 20 plot owners had entered into individual agreement with the first respondent to develop their respective plots. However, the petitioners had not developed any such agreement. While so, the second respondent with the assistance of the first respondent started putting up a compound wall which necessitated the petitioners to file the suit.

4. Pending the suit the first respondent/Promoter filed I.A., for interim injunction to restrain the plaintiffs from alienating their plots 21,20,22 and 28 to any third party buyers and also dealing in any manner that would hamper and jeopardise the project work undertaking by it in the said Colony. However, no interim injunction was granted by the trial court since no prima facie case had been made out by the first respondent. When the said I.A., was being periodically adjourned, the

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first first respondent filed a memo on 27.10.2006 contending that the plaintiffs with the rowdy elements trying to interfere with the possession of the first respondent and making attempts to enter into the suit properties which would infringes the right of the respondents/defendants but also causes nuisance to the other plot owners and prayed for interim order to carry out the project work at the plots.

5. The trial court after hearing the counsel of the respondents/defendants granted the order of status quo and posted the matter to 30.10.2006 for hearing the arguments of the petitioners/plaintiffs. According to the learned senior counsel for the revision petitioners, the order of status quo was granted in the memo filed by the respondents is beyond the scope of the suit as well as I.A., which is for an injunction restraining the plaintiffs from alienating their respective plots, particularly when there is no dispute as to the ownership of the respective plots. The order is a non speaking one line ex parte order. Further, according to the learned senior counsel for the revision petitioners, the order of status quo based on the memo, without there being an affidavit and petition, and when the defendants have not asserted any right to the property either in the form of a separate suit or counter claim cannot be granted against the plaintiffs, which would ultimately amount to granting a greater relief than what could be granted in the suit itself.

6. On the other hand, the learned senior counsel for the first respondent contended that the CRP filed under Art.227 of the Constitution of India itself is not maintainable since such jurisdiction could be invoked only under extraordinary circumstances and in the instant case there is no illegality or irregularity in the order passed by the trial court as it has exercised the jurisdiction vested with it in the course of administration of justice under the given circumstances and the said order is appealable and therefore invoking the supervisory jurisdiction of this court is not maintainable in law. According to the respondents MOU between the Welfare Society and the first respondent was entered on 15.7.1998 and thereafter physical possession of the lands in the entire lay out was also handed over to the first respondent by the Society and thus the first respondent is in the settled possession of the entire lands including that of the petitioners. After some of the plot owners entered separate agreement with the first respondent development work was initiated in the lay out. The second petitioner has also entered into such agreement. Thus after the development work was started

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and was in progress by investing several crores of rupees, the petitioner and five others after having remained silent for nearly three years filed the suit disputing the right of the first respondent. Pending the suit the second and third plaintiffs agreed for the project work and delivered their plots. According to the first respondent it had carried out all the developmental activities right from the work of drawing lay out upto the stage of constructing the compound wall, filing of the lands and raisin the ground level by about 15 feet, demarcating the boundaries of each plot with the help of the Revenue Officials and also providing amenities like potable water, drainage, interior rod, electricity, cable network etc., It has also constructed nearly 60 prototype houses ;with unique structural designs strictly in accordance with the plan as approved by the sanctioning authorities. Now after the development that had taken place to gain profit, the petitioners attempted to alienate their lands to their party purchasers which according to the first respondent would defeat their rights accrued to them under the MOU. Therefore they filed the I.A., in the suit filed by the petitioners.

7. According to the learned senior counsel for the respondents, though the petitioners filed their counter, but did not contest the I.A., and in the meanwhile, the main suit itself was posted for arguments after examination of witnesses was over. The petition taken out by the petitioners to amend the suit relief from permanent injunction to the relief of mandatory injunction to remove the compound wall was also dismissed by the trial court. According to the respondents, in fact the first respondent though in physical possession of the entire layout had not done anything that would change the status quo of the suit properties in any manner during the pendency of the suit. But it is only the petitioners are attempting to alienate their plots to third party buyers, which is detrimental not only to the first respondent, but also to the other owners in the colony.

8. It is also submitted by the learned senior counsel that in an Arbitration Case in respect of the same project between the first respondent and another plot owner the Arbitrator has awarded a compensation of Rs.2 lakhs for the breach of contract committed by the plot owner. Therefore, the petitioners to some how alter the character of the suit property, wanted to forcibly enter into their plots and put up construction and with the help of rowdy elements made such an attempt on 27.10.2006. Only in such circumstances, the first respondent constrained to file the I.A.,. On the day of filing after hearing the arguments of the first and fourth respondents herein the matter was adjourned to

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30.10.2006 for the arguments of the respondent and status quo was ordered till then. The petitioners counsel did not argue on 30.10.2006 and it was adjourned to 6.11.2006. Even on 6.11.2006 the petitioners counsel did not argue the case and the matter was posted to 21.11.2006 extending the status quo. But without contesting the I.A., the petitioners preferred this CRP without filing an appeal, which is an abuse of process of law. Learned Senior counsel for the respondents contended that the order of status quo was passed only in the I.A., and not in the memo as contended by the revision petitioners.

9. Considering the above submissions of the learned counsels, it is clear that the order of status quo granted by the trial court is not prejudicial to the cause of both sides and by passing the order of status quo, the rights of the parties are not finally determined in the I.A., and the petitioners will be provided every opportunity to advance their arguments in the I.A., by the trial court. Further, under Order 39 Rule 1(a) the defendants are also entitled to file an application for temporary injunction if the suit property is in danger of being wasted or damaged, alienated by any party to the suit. It is also to be noted that the petitioners are not prevented in any manner in advancing their arguments in the pending I.A., before the trial court. The Apex Court in its judgment reported in AIR 2000 SC 3032 had categorically stated that invoking the constitutional remedy under Article 227 of Constitution of India should not be entertained when there is an efficacious alternative remedy of appeal provided under the Statute. In the present case the petitioners have without even contesting the I.A., and without exhausting the appeal remedy, have invoked the jurisdiction under Art.227 of the Constitution of India.

10. In AIR 2005 SC 104 the Hon'ble Supreme Court of India as well as this Court in the decision reported in 2005 (3) MLJ 689 have clearly held that the status quo of a suit property has to be preserved at all costs and no party should be allowed to disturb the nature of the suit property including its alienation, during the pendency of the suit. Admittedly, the petitioners have challenged the very right of the first respondent flowing from the MoU. In the main suit, it is stated that evidence is over and the suit is posted for arguments. At this juncture, if anything is done to alter the nature of the suit property by alienation as attempted by the petitioners, that would cause lot of prejudice to the rights of the respondent in case of their succeeding in the suit. Therefore, the I.A., and the order of status quo passed in the I.A., are very much within the scope

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of the main suit and there is absolutely no illegality or legal infirmity in the said order.

11. It is also to be pointed out that if the first respondent's right under the MOU is upheld by the trial court, then there will be a lot of prejudice to the first respondent. It is also to be seen that the first respondent has invested several crores of rupees in developing the lay out and constructing the prototype houses. For nearly three years, the petitioners have remained silent and only at the stage of constructing the compound wall, they rushed to file the suit. If the petitioners are permitted to alienate their plots to some other third party buyers who may construct houses there of their choice, it may look odd and elevation of the colony when under the MOU all the plot owners have agreed to construct the houses with the same size and design. Therefore, in such circumstances, if the order of status quo is vacated, by such alienation and construction, the very beauty of the uniformity in the structures in the colony may get spoiled, though the petitioners may have got individual right to construct houses of their choice. Therefore, I do not find find any ground to interfere with the order of status quo at this stage.

12. In AIR 2005 SC 104 (Maharwal Khewaji Trust Vs. Baldev Dass), in an identical case, the Hon'ble Supreme Court has held as follows:-

> "Unless and until a case of irreparable loss or damage is made out by a party to the suit, the Court should not permit the nature of the property being changed which also includes alienation or transfer of the property which may lead to loss or damage being caused to the party who may ultimately succeed and may further lead to multiplicity of proceedings. In the instant case no such case of irreparable loss is made out except contending that the legal proceedings are likely to take a long time and therefore, the respondent should be permitted to put the scheduled property to better use. In the facts and circumstances of the case, the lower appellate court and the High Court were not justified in permitting the respondent to change the nature of property by putting up construction as also by permitting the alienation of the property, whatever may be the condition on which the same is done. In the event of the appellant's claim being found baseless ultimately, it is always open to the respondent to claim damages or, in an appropriate case, the Court may itself award damages for the loss suffered, if any in this

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regard. Since the facts of this case do not make out any extraordinary ground for permitting the respondent to put up construction and alienate the same, Courts below erred in making the impugned orders. The said orders are liable to be set aside."

13. The above decision would squarely apply to the facts of the present case coupled with the fact that on the earlier occasion, in respect of the same subject matter of the property, in an Arbitration Proceedings, the Arbitrator has awarded a compensation of Rs.2,00,000/= on the owner of the plot, for breach of the contract with the first respondent/promoter.

14. However it is to be pointed that the merits of the rival contentions of the parties to the suit as well as the rights of the parties in relation to the suit properties can be decided only in the trial of the suit, which is also in the arguments stage, if any finding is rendered one way or the other in this CRP touching on the merits of the subject matter of the suit, it would cause great prejudice to both the parties. Therefore, this CRP is dismissed with a direction to the trial court to dispose of the suit on merits and according to law, which is ripe for arguments within a period 2 months from the date of receipt of a copy of this order, without being influenced by any of the observations made in this order.

15. Consequently, connected M.P.No:2 is also dismissed and M.P.No:3 is allowed. No costs.

Gkv

Sd/
Asst.Registrar

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Sub Asst.Registrar

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Copy to:

The Registrar,
City Civil Court,
Chennai.

2. The VIII Assistant Judge
City Civil Court, Chennai

+ one cc to M./s. Sarvabhauman Associates, sr no. 23783
+ one cc to M/s. K.V. Anantha Krishnan,Advocate sr no. 23355
+ one cc to Mr. M. Ganesan, Advocate sr no. 23616

MBR(CO)
NM(12.04.07)

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